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8 *Attorneys for Defendant,*
VEDANTI SYSTEMS LIMITED

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 MAX SOUND CORPORATION
13 and VEDANTI SYSTEMS
14 LIMITED,

15 Plaintiffs,

16 vs.
17

18 GOOGLE, INC., YOUTUBE, LLC,
19 and ON2 TECHNOLOGIES, INC.,

20 Defendants.
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Case No. 5:14-cv-04412-EJD

NOTICE OF MOTION AND
MOTION TO WITHDRAW AS
COUNSEL OF RECORD FOR
DEFENDANT VEDANTI SYSTEMS
LIMITED; DECLARATION OF
DAVID P. BEITCHMAN

[Local Rule 11-5]

22 Date: May 21, 2015
23 Time: 9:00 a.m.
24 Courtroom: "4"

1 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS' OF RECORD:**

2 PLEASE TAKE NOTICE that on May 21, 2015 at 9:00 a.m. in Courtroom "4"
3 of the above-entitled Court located at 280 South 1st Street, San Jose, CA 95113, the
4 Honorable Edward J. Davila presiding, the law firm of Beitchman & Zekian, P.C.
5 ("Law Firm"), will and hereby does move this Court, pursuant to Local Rule 11-5, for
6 an order permitting Law Firm to withdraw as counsel of record for Defendant
7 VEDANTI SYSTEMS LIMITED ("Defendant" or "Client").

8 This motion is based upon this notice of motion, the memorandum of points and
9 authorities, the declaration of attorney David P. Beitchman, all of the documents in the
10 court's file herein, and such further evidence as may be presented at the time of
11 hearing on the motion to compel.

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14 DATED: March 6, 2015

BEITCHMAN & ZEKIAN, P.C.

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16 By: /s/ Andre Boniadi
17 David P. Beitchman,
18 Andre Boniadi,
19 BEITCHMAN & ZEKIAN, P.C.
20 *Attorneys for Defendant,*
VEDANTI SYSTEMS LIMITED

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STANDARD OF REVIEW**

4 Pursuant to Local Rule 11-5, “[c]ounsel may not withdraw from an action until
5 relieved by order of Court after written notice has been given reasonably in advance to
6 the client and to all other parties who have appeared in the case.” The moving papers
7 must disclose adequate grounds for excusing counsel from further representation in
8 the particular case. Federal courts generally look to applicable state rules of
9 professional conduct. *See Statue of Liberty–Ellis Island Foundation, Inc. v.*
10 *International United Industries, Inc.* (SD NY 1986) 110 FRD 395, 397 (client's failure
11 to pay agreed-upon attorney fees may be ground for an attorney to withdraw).

12 Accordingly, and pursuant to the California Rules of Professional Conduct
13 (“CRPC”), the attorney-client relationship between Law Firm and Client has been
14 irreparably damaged and warrants this motion for relief as counsel, particularly due to
15 the following:

- 16 1. **The Client renders it unreasonably difficult for the Firm to carry out**
17 **the representation effectively.** CRPC, Rule 3-700(C)(1)(d). More
18 specifically, there has been a conflict regarding how to proceed with the
19 litigation as well as the scope of Law Firm’s representation.
20
21 2. **The Client breached the retainer agreement and obligations to the**
22 **Firm as to expenses or fees.** CRPC, Rule 3-700(C)(1)(f). More
23 specifically, Client has breached the express terms of the retainer
24 agreement existing between the parties by failing to pay the accrued legal
25 fees as required by said agreement.
26

27 As a result, Law Firm’s representation of Defendant is no longer feasible and it
28 is therefore necessary for Law Firm to withdraw as counsel. Additional facts giving

1 rise to this Motion are confidential and required to be kept confidential pursuant to
2 California Business and Professions Code §6068(e), Rule 3-100(A) of the California
3 Rules of Professional Conduct, and by the attorney-client privilege prescribed under
4 Evidence Code §§ 950 *et seq.*

5 To that end, and in deference to the attorney-client communication privilege,
6 Law Firm respectfully declines to provide further additional information in this public
7 filing, but can and will provide for the Court's *in camera* review, further information
8 in regards to this matter.

9 Pursuant to Local Rule 11-5, written notice of the herein motion has been given
10 by Law Firm reasonably in advance to the Client and to all other parties who have
11 appeared in the case.

12 Pursuant to Local Rule 7-3(a), any "opposition must be filed and served not
13 more than 14 days after the motion was filed." This motion was submitted for filing
14 on March 9, 2015. Thus, any opposition must be filed on or before March 23, 2015.

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18 DATED: March 6, 2015

BEITCHMAN & ZEKIAN, P.C.

19
20 By: /s/ Andre Boniadi
21 David P. Beitchman,
22 Andre Boniadi,
23 BEITCHMAN & ZEKIAN, P.C.
24 *Attorneys for Defendant,*
25 VEDANTI SYSTEMS LIMITED
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1 4. Additional facts giving rise to this Motion are confidential and required
2 to be kept confidential pursuant to California Business and Professions Code
3 §6068(e), Rule 3-100(A) of the California Rules of Professional Conduct, and by the
4 attorney-client privilege prescribed under Evidence Code §§ 950 *et seq.*

5 5. To that end, and in deference to the attorney-client communication
6 privilege, Law Firm respectfully declines to provide further additional information in
7 this public filing, but can and will provide for the Court's *in camera* review, further
8 information in regards to this matter.

9 6. Pursuant to Local Rule 11-5, written notice of the herein motion has been
10 given by Law Firm reasonably in advance to the Client and to all other parties who
11 have appeared in the case.

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13 I declare under penalty of perjury under the laws of the United States of
14 America that the foregoing is true and correct.

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17 DATED: 3/6/2015

/s/ David P. Beitchman
David P. Beitchman, declarant